

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-186833

DATE: September 24, 1976

MATTER OF: Hart Metals, Inc.

## DIGEST:

Delivery term "F.O.B. /origin/, Freight allowed to Destination" offered by bidder is not synonymous with "F.O.B. Destination" delivery term contained in solicitation since risk of loss for damage during transit would shift to Government under former term, thereby rendering bid nonresponsive.

Hart Metals, Inc. protests the rejection of its bid as nonresponsive under Defense Supply Agency (DSA) invitation for bids (IFB) DSA400-76-B-3868 issued by the Defense General Supply Center, Richmond, Virginia.

The procurement is for the purchase of 4,000 pounds of magnesium powder (Item 1) and 700 pounds of silicon (Item 2), for delivery F.O.B. Naval Weapons Support Center, Crane, Indiana. Only the award of Item 1 of the invitation is at issue here.

Bids opened on May 11, 1976, with four bids received for Item 1. The protester submitted the apparent low bid of \$3.24 per pound. However, in addition to the price, the protester inserted the notation "F.O.B. Tamaqua, Pa., /origin/ Freight Allowed to Destination." Protester is of the opinion that its offered delivery term is equivalent to the delivery term (F.O.B. destination) stated in the invitation.

The invitation provides for final acceptance of the supplies at origin. However, Armed Services Procurement Regulation (ASPR) § 7-103.6 (1975 ed.) entitled "Title and Risk of Loss (1968 June)", incorporated into the solicitation by reference, states in pertinent part:

"(b)(1) Unless this contract specifically provides otherwise, risk of loss of or damage to supplies covered by this contract shall remain with the Contractor until, and shall pass to the Government upon

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(i) delivery of the supplies to a carrier, if transportation is f.o.b. origin;

(ii) acceptance by the Government or delivery of possession of the supplies to the Government at the destination specified in this contract, whichever is later, if transportation is f.o.b. destination."  
(emphasis added)

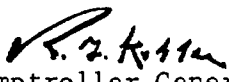
In accordance with the provisions of the foregoing clause, the Government would ultimately recover the transportation costs under the delivery term offered by the protester, but the risk of loss for damage to the supplies while in transit would shift to the Government, a burden which the IFB's F.O.B. Destination clause specifically placed on the contractor. In our decision B-146451, dated August 7, 1961, we stated that:

"Our Office has held that a deviation from advertised requirements is material if it affects either the price, quantity or quality of the articles offered. See 30 Comp. Gen. 179; 31 id. 660; and 33 id. 421. Under the facts stated by you, your offer to furnish the equipment on an f.o.b. origin basis, if it had been accepted, would have varied the obligation intended to be assumed by a prospective contractor under the invitation. In other words, under such a contract you could have satisfied the delivery requirement by merely handing it to a common carrier at South Norwalk, Connecticut, thus relieving your company of any further liability for loss or damage en route, and at the same time place upon the Government the burden and expense incident to the determination of responsibility for possible loss or damage in transit. The changes in contract terms which would have resulted from acceptance of your bid must be regarded as affecting the contract price. In the circumstances outlined by you it would appear that your bid was properly rejected as being nonresponsive."

B-186833

Consequently, since the exception taken by Hart Metals, Inc. to the delivery requirement of the invitation is a material deviation affecting the substance of the bid, the bid was properly rejected as being nonresponsive. ASPR §§ 2-404.2, 2-405 (1975 ed.).

The protest is denied.

  
Acting Comptroller General  
of the United States